

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RAYMOND BROWN,

Plaintiff,

-v-

No. 10 Civ. 3830 (LTS)(JCF)

BRIAN FISCHER, Commissioner for
N.Y.S. Corrections et al.,

Defendants.
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ORDER

Plaintiff Raymond Brown ("Plaintiff"), proceeding pro se, brings this action, pursuant to 42 U.S.C. § 1983, alleging that the defendants violated his civil rights when they issued a misbehavior report based on a urinalysis that, plaintiff claims, registered a false positive for the use of a controlled substance and which eventually resulted in his enrollment into a relapse program and the denial of merit time. The case was assigned to the undersigned and referred to Magistrate Judge James C. Francis. Defendants moved to dismiss the Complaint pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Judge Francis issued a Report and Recommendation, dated August 17, 2011 (the "Report"), which recommends that the Complaint should be dismissed for failure to state a claim upon which relief can be granted. No objection to the Report has been filed, and the time for doing so has passed.

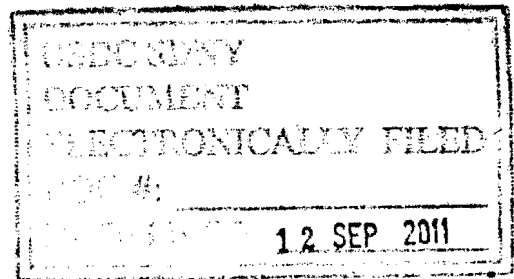
When reviewing a report and recommendation, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C.A. § 636(b)(1)(C) (West 2008). "To accept the report and recommendation of a

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magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Service, Inc., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (internal citations and quotation marks omitted). The Court is satisfied that the Report contains no clear error. Accordingly, the Court accepts the Report’s recommendation, and the Complaint is hereby dismissed without prejudice to refileing the action. The Clerk of Court is hereby requested to enter judgment accordingly and close this case.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: New York, New York
September 12, 2011



LAURA TAYLOR SWAIN
United States District Judge